

REMARKS

In the Office Action, claims 10-25 are pending and are rejected under 35 U.S.C 103(a) as being unpatentable over North, et al. (U.S. Patent No. 5,693,591) and Parr, et al. (U.S. Patent No. 5,885,932). This rejection is respectfully traversed.

The present invention relates to a rest breaking composition comprising an inorganic nitrate rest breaking agent, a surfactant, and an organic nitrogen containing compound selected from the group consisting of ethylenediamine, (C₁-C₃)alkylated ethylenediamines, (carboxymethyl)tri-(C₁-C₃)-alkylammonium salts, (2-hydroxyethyl)tri(C₁-C₃)alkylammonium salts, (2-hydroxypropyl)tri(C₁-C₃)alkylammonium salts, (2-hydroxybutyl)tri(C₁-C₃)alkylammonium salts, and mixtures thereof.

North discloses a process for breaking rest in deciduous fruit trees comprising applying to such trees a certain percentage of at least one rest breaking agent and also an alkoxylated amine compound as set forth in the formula in claim 1 of North. Parr discloses a process for breaking rest in bushes, shrubs, vines, nuts, berries and non-deciduous fruit trees comprising applying to such plants at least one rest breaking agent and also a certain percentage of an alkoxylated amine compound as set forth in the formula in claim 1 of Parr. In other words, North and Parr disclose that certain surfactants (i.e. alkoxylated amines and alkoxylated quaternary ammonium compounds) when combined with known rest-breaking agents enhance the ability of such rest breaking agents to improve yields and fruit quality and thus allow one skilled in the art to use less of such known rest breaking agents.

As admitted in the Office Action, neither North nor Parr disclose the use of the organic nitrogen containing compounds claimed in the present invention. Further, nothing in North or Parr teaches, suggests, or discloses, the use of such *undisclosed* nitrogen containing compounds in combination with an inorganic rest breaking agent and in further combination with any surfactant known to improve distribution of the

organic nitrogen containing compound and inorganic nitrogen rest breaking agent over a deciduous plant as claimed in the present invention.

It is asserted in the Office Action that because North states that "typical compounds suitable for use in the process of the present invention" include but are not limited to those listed in col. 4, lines 53-54, such suitable compounds could also include the organic nitrogen containing compounds disclosed in the present invention (i.e., the groups listed in present claim 10). The phrase "suitable compounds" at col. 4, line 53, taken in the context of the North patent would be understood by those skilled in the art to mean those *amino compounds* suitable for use in the invention disclosed by North. However, in the invention of North, it is specifically disclosed that the amino compounds used in the invention MUST be selected from the group consisting of alkoxylated amines represented by the general formula shown at col. 3, lines 1-56. The organic nitrogen containing compounds disclosed in the present invention (i.e., the groups listed in claim 10) are NOT a part of this selected group of alkoxylated amines. Thus, although it is true that suitable amino compounds for use with the process of North could include more than those compounds listed at col. 4, line 55 to col. 5, line 5, it is equally true that any such compounds are only suitable if they fall within the disclosed formula.

Further, even if, in arguendo, one were to conclude that the "comprising" language in North could be interpreted to mean that North could also include the groups listed in the present invention (e.g. the organic nitrogen containing compounds listed in the present invention), one would also have to combine such organic nitrogen containing compounds specifically with only inorganic nitrate rest-breaking agents and with any surfactant known to improve distribution of the organic nitrogen containing compound and the inorganic nitrogen rest breaking agent over a deciduous plant.

It is well established that the mere fact a prior art invention could be combinable or modifiable in some way to produce the claimed invention does not make the resultant combination or modification obvious without some teaching or suggestion in the prior art

as to the desirability to do so. The Office Action asserts that motivation exists to combine these references in such a manner because "one who is familiar with the art would be motivated to prepare a rest-breaking composition to improve the yields and quality of fruit from deciduous fruit trees." However, it is respectfully submitted that ALL rest breaking compositions are utilized to improve the yields and quality of fruit from certain types of cultivars when compared to cultivars on which no rest breaking compositions are used. Although it is true that one skilled in the art would not desire to create a rest breaking composition which did not do this, the fact that one skilled in the art would be motivated to create a useful rest breaking composition from prior art references disclosing useful rest breaking compositions does not, in itself, motivate one skilled in the art to do so in any particular manner.

Thus, it is unclear how the fact that North teaches rest-breaking compositions that improve the yields and quality of fruit from deciduous fruit trees would motivate one skilled in the art to combine North, which teaches a process for breaking rest in deciduous fruit trees comprising applying to such trees a certain percentage of at least one rest breaking agent and also an alkoxylated amine compound as set forth in the formula in claim 1 of North, and Parr, which teaches a process for breaking rest in bushes, shrubs, vines, nuts, berries and non-deciduous fruit trees comprising applying to such plants at least one rest breaking agent and also a certain percentage of an alkoxylated amine compound as set forth in the formula in claim 1 of Parr, with the result of specifically combining an inorganic rest breaking agent with one of a selected group of organic nitrogen containing compounds and any surfactant capable of improving distribution of the inorganic rest breaking agent and the organic nitrogen containing compounds as claimed in the present invention in order to have a beneficial effect on bud break.

For the reasons set forth above, the present invention is considered both novel and non-obvious over North and Parr, either taken alone or in combination.

Additionally, claims 10-17 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 10 and 11 of North. Specifically, it is asserted that the conflicting claims are not patentably distinct from each other for the reasons set forth in the 103(a) rejection. Thus, for the reasons set forth above, it is also believed that claims 10-17 of the present invention are patentably distinct over claims 10 and 11 of North and reconsideration of the obviousness-type double patenting rejection is respectfully requested.

The Applicants respectfully request reconsideration of the rejection of claims 10-25 and a finding that the claims are in condition for immediate allowance.

Respectfully submitted,

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